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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3022/2017*, **

Communication submitted by:	Roman Bratsylo, Valery Golovko and Sergey Konyukhov (represented by counsel, Roman Martynovsky, Sergiy Zayets, Philip Leach, Jessica Gavron and Kate Levine)
Alleged victims:	The authors
State party:	Russian Federation
Date of communication:	31 July 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 September 2017
Date of adoption of Views:	27 March 2024
Subject matter:	Forced naturalization and transfer of a prisoner from the territory of his or her nationality
Procedural issues:	Exhaustion of domestic remedies; non-substantiation of claims
Substantive issues:	Arbitrary detention; retroactive application of criminal law; right to remain in one's country; right to privacy; discrimination on the ground of national origin
Articles of the Covenant:	9, 12, 15, 16, 17 and 26
Articles of the Optional Protocol:	2 and 5

1. The authors of the communication are Roman Bratsylo (born in 1968), Valery Golovko (born in 1966) and Sergey Konyukhov (born in 1968). They claim that the State party has violated their rights under articles 9, 12, 15, 16 (except for Mr. Bratsylo), 17 (except for Mr. Bratsylo) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The authors are represented by counsel.

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

Facts as submitted by the authors

2.1 The three authors are nationals of Ukraine who were detained at remand centre No. 1 in the city of Simferopol of the Autonomous Republic of Crimea when it came under occupation by the State party in February and March 2014. On 21 March 2014, the State party adopted a law proclaiming Crimea to be a part of its territory as of 18 March 2014. On 1 April 2014, Russian law was enforced in the territory of Crimea. Under the provisions of the law of 21 March 2014, nationals of Ukraine who were permanent residents of Crimea automatically obtained Russian citizenship. Persons who did not want to become Russian citizens could opt out by personally presenting a declaration to one of the special Federal Migration Service offices within one month (that is, between 18 March and 18 April 2014). The instructions of the Federal Migration Service on the procedure for opting out were issued on 1 April 2014. Only two such offices had been established in Crimea by 9 April 2014, and nine existed by 10 April 2014. Persons in detention were not notified of the nationality-related changes, and the few who found out about the new law were not allowed to opt out. Mr. Golovko and Mr. Konyukhov did not discover that they had become Russian citizens until long after the deadline to opt out.

2.2 Mr. Bratsylo was on trial for offences under the Criminal Code of Ukraine, before the Leninskiy District Court of Sevastopol, when the occupation began. Subsequently, his detention was extended by the same court on new charges brought by the prosecutor for the case under the Criminal Code of the State party. On 30 April 2014, the Leninskiy District Court sentenced him to eight and a half years in prison. He did not appeal the sentence. On 3 July 2014, he was transferred from Crimea to the State party to serve his sentence in a prison in the city of Shakhty, Rostov Province.

2.3 Mr. Golovko and Mr. Konyukhov were convicted of offences under the Criminal Code of Ukraine on 13 November 2013 by the Kyiv District Court of Simferopol and sentenced to 13 years in prison each. On 13 December 2013, they appealed to the Court of Appeal of the Autonomous Republic of Crimea. On 31 July 2014, their appeals were considered by the Court of Appeal of the Republic of Crimea, which had been established by the State party. Upon the prosecutor's motion, the charges against the authors were reclassified under the State party's Criminal Code, but the sentences remained unchanged. Mr. Golovko submitted a cassation appeal to the State party's Supreme Court, which was rejected on 26 September 2014. On 17 December 2015, following a cassation appeal submitted by the prosecutor to the Supreme Court of the Republic of Crimea (formerly the Court of Appeal of the Republic of Crimea), their sentences were reduced to 12 and a half years in prison. On 2 August 2014, Mr. Konyukhov was transferred from Crimea to a prison in the city of Shakhty to serve his sentence. Mr. Golovko was transferred to a prison in the same province on 11 September 2014.

2.4 The authors claim that there are no effective domestic remedies against violations of their rights under articles 9, 12, 15, 16, 17 and 26 of the Covenant, since Russian courts cannot adopt decisions contrary to Russian laws and the Constitution, as amended after March 2014. Specifically, the authors submit that there is no prospect of success in seeking domestic remedies in relation to articles 9 and 15 of the Covenant because their convictions and the retroactive application of the State party's criminal legislation were based on Federal Act No. 91-FZ of 5 May 2014 on the Application of the Provisions of the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation in the Territories of the Republic of Crimea and the City of Federal Importance of Sevastopol, which legitimized the retroactive application of Russian criminal law in the territory of Crimea. Similarly, the authors submit that the violation of their rights under articles 16 and 17 of the Covenant was due to the passing of the new Federal Constitutional Act No. 6-FKZ of 21 March 2014 on the Admission to the Russian Federation of the Republic of Crimea and the Establishment within the Russian Federation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance of Sevastopol, on the basis of which Russian citizenship was imposed on all residents of Crimea. Moreover, Mr. Golovko and Mr. Konyukhov cannot renounce their Russian citizenship while they are serving their prison sentences, and their domestic appeals would therefore be bound to fail. Concerning their claim under article 12 of the Covenant, the authors submit that, to protect their right to remain in their own country, the domestic authorities would need to acknowledge that Crimea is a

part of Ukraine, which objectively has no chance of success. Lastly, the authors claim that the above also applies to the lack of effective domestic remedies in relation to their claim under article 26 of the Covenant.

Complaint

3.1 The authors claim that the State party violated their rights under article 9 of the Covenant because their detention after the beginning of the occupation of Crimea was arbitrary. They argue that the State party does not have jurisdiction to execute sentences handed down by Ukrainian courts. They submit that they were sentenced for actions committed before the State party extended the application of its criminal legislation to Crimea, and those actions could not be considered to be criminal under articles 9 and 12 (3) of the State party's Criminal Code.

3.2 The authors argue that the State party violated their rights under article 12 of the Covenant, which confers the right to stay in one's own country and contains a prohibition against forceful removal or expulsion from the territory of one's nationality. They submit that, despite being nationals of Ukraine, they were expelled from Crimea, which is a territory of Ukraine, to the State party to serve their prison sentences, while article 76 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) requires that persons accused of offences be detained in the occupied country and, if convicted, serve their sentences therein.

3.3 The authors claim that the State party applied its criminal legislation to them retroactively, in violation of article 15 of the Covenant. They refer to article 65 of the Fourth Geneva Convention, which states that the penal provisions enacted by the occupying Power are not to come into force before they have been published and brought to the knowledge of the inhabitants in their own language. They submit that the State party never published its Criminal Code in the territory of Crimea in local languages.

3.4 Mr. Golovko and Mr. Konyukhov claim that the forceful conferral upon them of Russian citizenship violated their rights under article 17 of the Covenant. They argue that it had a negative effect on their private lives, as it forced upon them loyalty to the State party and a new identity linking them to the aggressor State.

3.5 Lastly, the authors claim that imposing on them Russian citizenship and subsequently transferring them to the State party constituted a violation of article 26 of the Covenant. They submit that the actions of the authorities related to the imposition of Russian citizenship and Russian identity have a negative impact on residents of Crimea who identify as Ukrainians.[1]

State party's observations on admissibility and the merits

4.1 In a note verbale dated 19 March 2018, the State party submitted its observations on the admissibility and merits of the communication.

On admissibility

4.2 The State party notes that it does not follow from the materials submitted by the authors that they have exhausted any domestic remedies in connection with the alleged violation of articles 9, 12, 15, 16, 17 and 26 of the Covenant. Consequently, it argues that the authors' claims under the above-mentioned articles are inadmissible for non-exhaustion of domestic remedies under article 2 of the Optional Protocol.

4.3 Concerning the authors' claim under article 9 of the Covenant, the State party submits that the authors were charged with, and subsequently sentenced for, committing certain crimes, and the measure of deprivation of liberty was applied in respect of them in compliance with the provisions of the State party's Code of Criminal Procedure, in force in the territory of Crimea as of 18 March 2014. It argues that the question raised by the authors of the lack, in their opinion, of the State party's criminal jurisdiction over the crimes committed by them in no way affects the lawfulness and justifiability of their deprivation of

[1] The authors initially also raised a claim under article 16 of the Covenant, but they later decided not to pursue it.

liberty in accordance with the legislation of the State party, the universally recognized norms and principles of international law and the international agreements of the State party, including the Covenant. Consequently, the State party submits that the authors' claim concerning the alleged violation of article 9 of the Covenant is manifestly unfounded and, as a consequence, should be declared inadmissible under article 2 of the Optional Protocol.

4.4 Concerning the authors' claim under article 12 of the Covenant, the State party notes that it does not follow from the materials submitted that it in any way restricted the authors' right to remain in their own country. It submits that, on 18 March 2014, the territory of Crimea, including the territory of the city of Sevastopol, became a part of the State party, having ceased to be a part of the territory of Ukraine. It argues that, if the authors consider Ukraine to be their own country, nothing impedes them from returning to Ukraine after having served the sentences imposed by the courts of the State party. The State party notes that its interpretation of the provisions of article 12 of the Covenant does not allow it to conclude that they imply the prohibition of transfers and expulsions of citizens from the territory of their country of citizenship, as claimed by the authors. In view of the above, the State party submits that the part of the authors' communication concerning the alleged violation of their right to remain in their own country is manifestly unfounded, that the part concerning the alleged violation of the prohibition of forced transfers or expulsions of citizens from the territory of their country of citizenship is incompatible with the provisions of the Covenant and, as a consequence, that the claim under article 12 of the Covenant is inadmissible under articles 2 and 3 of the Optional Protocol.

4.5 Regarding the authors' claim under article 15 of the Covenant, the State party notes that the crimes in question, for which the authors were sentenced to periods of imprisonment of various lengths, are criminally punishable acts not only under the provisions of the criminal legislation of Ukraine but also under the provisions of the Criminal Code of the State party. At the time of the commission of these acts, the authors could not have been unaware of the criminal liability entailed by the acts under the provisions of the criminal legislation of Ukraine. The State party submits that the fact that Crimea was admitted as a constituent entity of the State party can in no way be considered to be a circumstance releasing the authors from criminal liability for murder, intentional infliction of grievous bodily harm and extortion. Consequently, the provisions of article 15 of the Covenant cannot be construed in such a way that would allow persons who have committed criminally punishable acts, considered as such under the criminal legislation of virtually all countries, and in respect of whom criminal proceedings have already been initiated, to evade criminal responsibility in the event of a change in the territorial jurisdiction of the State. Consequently, the State party argues that the authors' claim under article 15 of the Covenant is manifestly unfounded and, therefore, is inadmissible under article 2 of the Optional Protocol.

4.6 Lastly, regarding the authors' claim under article 26 of the Covenant, the State party argues that the authors have failed to demonstrate that they were subjected to treatment that was discriminatory on the grounds mentioned in the Covenant. According to the State party, the authors committed crimes and were, like all other persons who commit crimes, irrespective of their nationality, convicted in accordance with the procedure provided for under the Code of Criminal Procedure and on the basis of the provisions of the Criminal Code of the State party. On the basis of the above, the State party argues that the authors' claim under article 26 of the Covenant is manifestly unfounded and, consequently, is inadmissible under article 2 of the Optional Protocol.

On the merits

4.7 The State party notes that, under article 23 of Federal Constitutional Act No. 6-FKZ, legislative and other normative legal acts of the State party entered into force in the territory of the Republic of Crimea and the city of Sevastopol on the date of their admission to the State party. On the basis of the above, the State party submits that its legislative and other normative legal acts have been in force in the territory of the Republic of Crimea and the city of Sevastopol since 18 March 2014.

4.8 The State party notes that, pursuant to article 2 of Federal Act No. 91-FZ, the criminality and punishability of acts committed in the territory of the Republic of Crimea and the city of Sevastopol before 18 March 2014 are to be determined on the basis of its domestic

legislation. If criminal proceedings in a case commenced before 18 March 2014, they are to continue, following the procedure established in the Code of Criminal Procedure of the State party. According to the State party, the defendant's actions are subject to reclassification by the court under the Criminal Code of the State party on the basis of a motion by the prosecutor for the case, on condition that such reclassification does not put the defendant in a worse position. At the same time, the courts of first and second instance are to continue all court proceedings that have commenced, and the punishment is to be imposed in conformity with the requirements of article 10 of the Criminal Code of the State party, which establishes the rules for retroactive application of the criminal law.

4.9 The State party submits that, on 13 November 2013, the Kyiv District Court of Simferopol found Mr. Golovko and Mr. Konyukhov guilty of the offences of extortion (Criminal Code of Ukraine, art. 189 (4)) and premeditated murder, committed with cruelty, with mercenary motives and by a group of persons acting by prior conspiracy (Criminal Code of Ukraine, art. 115 (2), subparagraphs (4), (6) and (12)). On 30 April 2014, the Leninskiy District Court of Sevastopol found Mr. Bratsylo guilty, under article 111 (4) of the Criminal Code of the State party, of intentional infliction of grievous bodily harm resulting in the death of the victim by negligence. Consequently, the authors were convicted for the commission of acts considered criminal under the criminal legislation of both Ukraine and the State party.

4.10 The State party notes that the authors had the right to appeal their sentences through appeal and cassation proceedings. However, Mr. Bratsylo did not appeal his sentence, while Mr. Golovko and Mr. Konyukhov did appeal theirs, as they disagreed with the conclusions reached by the court in the assessment of evidence and the imposition of punishment. The actions of Mr. Golovko and Mr. Konyukhov were reclassified under the Criminal Code of the State party, which provides for the imposition of punishments for analogous crimes, but the punishment in the form of deprivation of liberty was left unchanged. At the same time, the court considered that the punishment stipulated in the sentence was appropriate in view of the nature and degree of social threat of the acts committed and the character of the convicted persons. In addition, the appellate court excluded from the sentence the additional punishment of confiscation of property, which had been imposed by the court of first instance on the basis of article 59 of the Criminal Code of Ukraine, since the sanctions provided for under articles 105 and 163 of the State party's Criminal Code do not include this form of punishment. Furthermore, the court removed from the sentence the costs associated with conducting an expert examination. On the basis of the above, the State party submits that the appellate court introduced amendments to the sentences imposed on Mr. Golovko and Mr. Konyukhov, which improved their position, in line with article 10 of the State party's Criminal Code.

4.11 Concerning the authors' claim under article 17 of the Covenant, the State party submits that, according to article 5 of the Treaty between the Russian Federation and the Republic of Crimea on the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Entities as Part of the Russian Federation, of 18 March 2014, from the date of admission of Crimea to the State party, citizens of Ukraine and stateless persons permanently residing on that date in the territory of the Republic of Crimea or the city of Sevastopol are to be recognized as citizens of the State party, except for persons who, within one month of that date, declare their wish to retain any other citizenship that they and/or their minor children hold or to remain stateless persons. The State party notes that, if the authors had not wished to become its citizens, they could, in compliance with the above-mentioned legislative norm, have declared, within one month of the date of the admission of Crimea to the State party, their wish to retain any other citizenship that they held or to remain stateless persons.

4.12 The State party notes that the Constitutional Court, while reviewing the constitutionality of article 4 (1) of Federal Constitutional Act No. 6-FKZ, noted that the provision in question, which granted the status of citizen of the State party to citizens of Ukraine who, on 18 March 2014, were permanently residing in the territory of the Republic of Crimea or the city of Sevastopol, guaranteed the rights and legitimate interests of those persons, allowing them freedom in their decision on citizenship. The Constitutional Court pointed out that, from 18 March 2014, to recognize a citizen of Ukraine or a stateless person as a citizen of the State party, he or she must have been permanently residing on that date in

the territory of the Republic of Crimea or the city of Sevastopol. The State party submits that this condition is aimed at ensuring that its citizenship is granted to persons who have a real link with the territory of the Republic of Crimea or the city of Sevastopol or who have expressed a clear desire to forge such a link and who form part of the permanent population of the territory and of the Russian Federation as a whole, and is based on an understanding of Russian citizenship as a stable legal connection of a person with the State party.

4.13 The State party submits that, within the framework of the Treaty on Admission, during the period following the acquisition of independence by Crimea and prior to its admission to the State party, the question of persons recognized as citizens of Crimea had not been regulated and, therefore, for the State party as the successor State, citizens of Crimea were considered to be persons with Ukrainian citizenship and stateless persons who, on 18 March 2014, had been permanently residing in the territory of the Republic of Crimea or the city of Sevastopol and who did not express within one month a wish to retain only their other citizenship or to remain stateless persons.

4.14 The State party submits that, according to article 17 of the Federal Act on Citizenship of the Russian Federation, in the event of a change of a State border following an international agreement, persons residing in the affected territory have the right to choose their citizenship in accordance with the procedure and within the time frame established by the corresponding international agreement. It notes that the Treaty on Admission of 18 March 2014 does not require renunciation of Ukrainian citizenship as part of the automatic acquisition of Russian citizenship by persons who permanently resided in the territory of the Republic of Crimea or the city of Sevastopol on the date of admission of Crimea to the State party. According to the State party, Ukrainian citizens who have automatically acquired Russian citizenship and have not renounced their Ukrainian citizenship on this ground retain their Ukrainian citizenship. They are subject to the norms of the legislation on dual citizenship.

4.15 The State party notes that Mr. Golovko and Mr. Konyukhov have not provided any evidence to indicate that they were deprived of an opportunity to refuse Russian citizenship in the month following the signature of the Treaty on Admission. It submits that, if they had been deprived of the right to refuse Russian citizenship, they could have appealed using administrative or court procedures, which they did not do.

4.16 Concerning the transfer of Mr. Golovko and Mr. Konyukhov to Ukraine, the State party notes that, in accordance with article 20 (b) of the Federal Act on Citizenship, it is prohibited to withdraw citizenship from a person in respect of whom a court has entered a guilty verdict that has acquired legal force and is subject to implementation. It submits that, in accordance with article 6 (1) of the same Act, a Russian citizen who also holds citizenship of another country is to be considered by the State party as a Russian citizen only. In the absence of an international agreement regulating matters of dual citizenship between the State party and Ukraine, the State party submits that the transfer of Mr. Golovko and Mr. Konyukhov to Ukraine under the Convention on the Transfer of Sentenced Persons of 21 March 1983 is not possible.

4.17 Lastly, with regard to Mr. Bratsylo, the State party notes that it has been established that he does not hold Russian citizenship, and the question of his transfer to Ukraine, where he would continue to serve his sentence in the form of deprivation of liberty, is currently being considered by the competent authorities of the State party and Ukraine in accordance with the provisions of the Convention on the Transfer of Sentenced Persons. The State party submits that, on 31 December 2015, a letter and documents related to the transfer of Mr. Bratsylo were submitted to the Ministry of Justice of Ukraine for consideration. As there was no reply from the Ministry of Justice of Ukraine, on 22 December 2016, the State party's Ministry of Justice sent a reminder to its Ukrainian counterpart, without receiving a response. In view of the above, the State party believes that it has not violated Mr. Bratsylo's rights under the Covenant.

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 9 November 2018, the authors submitted their comments on the State party's observations on admissibility and the merits. The authors submit that the current situation in Crimea amounts to an ongoing state of occupation, to which the Fourth Geneva Convention

applies. Under article 2 of the Convention, a territory is "occupied" when it comes under the partial or total control or authority of foreign armed forces without the consent of the domestic Government.

On admissibility

5.2 Concerning the exhaustion of domestic remedies, the authors submit that the policies that the State party has adopted since 18 March 2014, aimed at ensuring the unlawful annexation of Crimea, constitute "administrative practices", as a result of which they suffered the violations of the provisions of the Covenant raised in their communication. They refer in particular to the State party's automatic, blanket naturalization of residents of Crimea and its imposition of Russian criminal law and repeal of Ukrainian criminal law in the territory of Crimea. In the light of these "administrative practices", the authors submit that the requirement for them to exhaust domestic remedies should be considered inapplicable due to the futility and/or ineffectiveness of any proceedings brought in that context.

5.3 More specifically, concerning the admissibility of his claims under articles 9 and 15 of the Covenant, Mr. Bratsylo submits that he did not challenge the extension of his pretrial detention or his conviction and sentencing. He argues that, even if he had sought to appeal before the Russian courts the extension of his pretrial detention, from 20 February 2014, and his imprisonment after conviction, it would have been impossible for him to challenge the same underlying point of illegality due to the enactment of the above-mentioned laws (see para. 2.4 above). The authors submit that the combined force and effect of the new laws and the decision of the Constitutional Court automatically rendered any possible remedies practically ineffective, because no court in the territory of the Crimean peninsula or in the State party would adopt a decision contrary to federal law or a judgment of the Constitutional Court. The pursuance of any domestic remedies, which could only have been decided in accordance with this legal framework, would therefore have been futile, offering the authors no real prospect of success.

5.4 Concerning the admissibility of their claims under articles 9 and 15 of the Covenant, Mr. Golovko and Mr. Konyukhov note that they pursued criminal appeals against their convictions before the State party's courts. They submit that none of the resulting decisions of the Russian courts addressed the substance of their complaints under articles 9 and 15 of the Covenant, namely, the illegality of the application of Russian law to acts committed in the territory of Crimea before its unlawful occupation by the State party.

5.5 The authors note that the State party has failed to identify the existence, or effectiveness, of any specific remedies in respect of their claims under articles 9 and 15 of the Covenant and, therefore, its submission regarding the inadmissibility of their complaints should be rejected for failing to discharge the burden of proof with regard to the existence of the purportedly effective domestic remedies that, it argues, should have been pursued. The authors note that an application to the Constitutional Court would not constitute a direct or accessible remedy for them. Considering the above, the authors reiterate that there are no available domestic remedies in respect of their complaints under articles 9 and 15 of the Covenant.

5.6 With regard to the admissibility of their claim under article 12 of the Covenant, the authors submit that the Russian authorities have repeatedly rejected their requests to be transferred to Ukraine. They argue that there are no available domestic remedies through which they could have effectively challenged the legality of their transfer to Rostov Province and the refusal to return them to Ukraine and that, in its observations, the State party failed to refer to any specific remedies available to them.

5.7 Concerning their claim under article 17 of the Covenant, the authors note that Russian citizenship was not imposed on Mr. Bratsylo, and therefore he does not submit a claim in relation to the aspect of forced citizenship. Nevertheless, Russian citizenship was imposed on Mr. Golovko and Mr. Konyukhov following the entry into force of the Treaty on Admission, and they were never allowed to exercise their right to refuse Russian citizenship. Considering the above, they argue that there is no real prospect of their successfully challenging the legality of the imposition of Russian citizenship on them or the legality of the Federal Act on Citizenship.

5.8 As to the admissibility of their claim under article 26 of the Covenant, the authors submit that there are no available domestic remedies through which they can effectively challenge the discriminatory effect of the laws pursuant to which they were automatically naturalized by the State party. They argue that effectively challenging the discriminatory effect of the laws would have been practically impossible, in the light of the clearly divergent framing of the occupation by the State party.

On the merits

5.9 The authors submit that their transfer from Ukraine and subsequent detention in the State party amount to a continuing violation of article 9 of the Covenant. According to the authors, from the start of the occupation, the State party should have ensured the continuing application and enforcement of Ukrainian criminal law in Crimea, including with respect to offences committed before the occupation, in accordance with articles 64 and 70 of the Fourth Geneva Convention. They argue that the State party had no power to execute decisions of Ukrainian courts, and there were neither bilateral agreements concluded between Ukraine and the State party on the transfer of authority for the execution of decisions of Ukrainian courts nor unilateral acts issued by the State party on the recognition of such decisions. The authors submit that the State party is not to be regarded as the successor in respect of the legal procedures related to their criminal cases or as the successor State of Crimea and the city of Sevastopol, as the Crimean peninsula cannot be regarded as a subject of international law.

5.10 The authors note that the offences with which they were charged constituted crimes under the Criminal Code of Ukraine at the time of their commission. On 18 March 2014, the State party terminated the validity of the Criminal Code and Code of Criminal Procedure of Ukraine in the occupied territory and applied to that territory its own legislation. On 5 May 2014, the State party adopted Federal Act No. 91-FZ, which retrospectively applied the criminal legislation of the State party to all acts committed before 18 March 2014 in the territory of the Crimean peninsula, in violation of the Covenant and international humanitarian law.

5.11 The authors reject the State party's argument that, on 18 March 2014, the territory of Crimea, including the territory of the city of Sevastopol, stopped being a part of Ukraine and that it therefore did not violate their rights to remain in their own country. They argue that their transfer from Ukraine and subsequent detention in the State party amounted to a continuing violation of article 12 (4) of the Covenant. Mr. Golovko and Mr. Konyukhov submit that, before their arrest, they were residents of the Autonomous Republic of Crimea, and Mr. Bratsylo resided in Zaporizhzhia, in eastern Ukraine. The authors argue that articles 49 and 76 of the Fourth Geneva Convention clearly establish that individual forcible transfers from the occupied territory to the territory of the occupying Power are forbidden and that, if convicted of an offence, protected persons must serve their sentences in the occupied territory. They note that the Committee, in its general comment No. 27 (1999) on freedom of movement, stipulated that the prohibition contained in article 12 (4) of the Covenant against the arbitrary deprivation of the right to enter one's own country implies the right to remain in one's own country and the prohibition of enforced population transfers or mass expulsions to other countries.[2]

5.12 With regard to their claim under article 15 of the Covenant, the authors reject the State party's argument that the criminal responsibility of residents of Crimea for acts committed in the territory of Crimea before 18 March 2014 is to be determined under the criminal legislation of the State party. The authors note that Mr. Bratsylo was charged with committing a crime in September 2013, while Mr. Golovko and Mr. Konyukhov were convicted of a crime committed in March 2010, but neither crime was regarded as a punishable offence under the Criminal Code of the State party.

5.13 The authors submit that, while article 17 of the Covenant does not expressly refer to "nationality" as a part of the right to "privacy, family, home or correspondence", they consider that the Committee's interpretation of article 17, and the construction and application of the "right to nationality" by other international bodies and in other treaties,

[2] General comment No. 27 (1999), para. 12.

provides a sufficient basis for the Committee to examine their complaint within the scope of that provision. The authors reject the State party's contention that the automatic naturalization process in Crimea was in any way justified by, or in conformity with, international law.

5.14 Mr. Golovko and Mr. Konyukhov submit that they were not informed in due time about the enactment of these laws or about the option of refusing Russian citizenship and that the imposition of citizenship of the State party was against their will, as they do not consider that they have any "real link" with the State party and describe themselves as Ukrainian citizens, with deep personal and professional ties to Ukraine.

5.15 Both authors submit that, upon arrival at their respective penal colonies in Rostov Province, they were given forms to fill out so that Russian passports could be issued in their names, but they both refused to sign them. They subsequently submitted letters refusing Russian citizenship, as they considered themselves to be, and identified themselves as, citizens of Ukraine only. However, they were told that they could not renounce their Russian citizenship because the deadline for refusing it had already passed. Moreover, the provisions of the national legislation of the State party expressly prohibit a person from renouncing his or her citizenship while serving a prison sentence. Considering the above, the authors submit that the imposition of Russian citizenship breached their rights under article 17 of the Covenant, as it constituted an unlawful and arbitrary interference with their social identity.

5.16 With regard to their claim under article 26 of the Covenant, Mr. Bratsylo submits that he became a foreigner in his own country and is now subject to restrictions on many of his rights. At the same time, he notes that his situation differs from that of other foreigners in the State party because he did not become a foreigner of his own will but at the instigation of the State party, which had occupied his country and restricted his rights. Consequently, he argues that the State party is treating him as a foreigner without considering the specific nature of his situation, which amounts to discrimination.

5.17 Mr. Golovko and Mr. Konyukhov submit that Russian citizenship was imposed on them on the basis of their Ukrainian nationality and their residence in the territory of the Crimean peninsula. They argue that such actions by the State party are to be regarded as discriminatory on the basis of national origin. The authors assert that the laws that enacted the forced naturalization policy were specifically targeted at people of Ukrainian national origin in Crimea, which is a prohibited ground of discrimination.

5.18 The authors submit that, by transferring them to the State party to serve their sentences, the State party did not take into account the specific nature of their situation as Ukrainians who resided in the occupied territory and who have the status of protected persons according to the Fourth Geneva Convention. The authors are linked to Ukraine and have no genuine and effective links with the territory of the State party. The authors argue that this constitutes a failure by the authorities of the State party to provide different treatment to persons in significantly different circumstances.

Authors' additional information

6.1 On 6 June 2019, Mr. Bratsylo's legal representatives informed the Committee that, in view of the information provided by the State party, as summarized in paragraph 4.17 above, they had requested the Ministry of Justice of Ukraine to inform them about any letters received from the State party that concerned Mr. Bratsylo's transfer to Ukraine. In response, they had been informed that his transfer could be carried out only pursuant to a diplomatic agreement between the two countries and that, on 1 August 2016, the Ukrainian authorities had made a formal request through diplomatic channels for the transfer of Mr. Bratsylo to Ukraine, to which the State party had not responded.

6.2 On 1 March 2024, the authors informed the Committee that they had all been released from prison in 2022 and that at least two of them, namely, Mr. Golovko and Mr. Konyukhov, had since returned to Crimea.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the present communication arises in respect of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine. The Committee notes that the authors and the State party acknowledge that the State party exercises effective control over the territory of the Crimean peninsula, which engages the State party's jurisdiction for the purposes of the Covenant and the Optional Protocol.[3]

7.4 The Committee notes the authors' submission that they have decided not to pursue their claim under article 16 of the Covenant. Given the express withdrawal of that claim by the authors, the Committee does not find it necessary to examine it.

7.5 The Committee notes the State party's assertion that the authors failed to exhaust domestic remedies before submitting their communication to the Committee. The Committee also notes the authors' argument that there are no effective domestic remedies against violations of their rights under articles 9, 12, 15, 17 and 26 of the Covenant, since the State party's courts cannot adopt decisions contrary to Russian laws and the Constitution, as amended after March 2014. The Committee recalls that an author must make use of all judicial and administrative avenues that offer a reasonable prospect of redress.[4] It observes that, beginning on 18 March 2014, the de facto authorities of Crimea and the city of Sevastopol acted in accordance with the Treaty on Admission of 18 March 2014, Federal Constitutional Act No. 6-FKZ and Federal Act No. 91-FZ, which provide for the wholesale enactment of Russian law in the Autonomous Republic of Crimea. The Committee notes the authors' assertion that the combined force and effect of the above-mentioned laws, coupled with the 19 March 2014 decision of the Constitutional Court of the State party affirming the constitutionality of the Treaty on Admission and its objectives, automatically rendered any possible remedies practically ineffective, because no court in the territory of Crimea or in the State party would adopt decisions contrary to federal law or a judgment of the Constitutional Court. The Committee recalls that, whenever the jurisprudence of the highest domestic tribunal has decided the matter at issue, thereby eliminating any prospect of the success of an appeal before the domestic courts, authors are not required to exhaust domestic remedies.[5]

7.6 The Committee notes the authors' argument that their communication should be found admissible because the State party has failed to establish the existence, availability or efficacy of any domestic remedies in respect of their claims under articles 9, 12, 15, 17 and 26 of the Covenant. In this regard, the Committee has consistently held that the State party must describe in detail which legal remedies would have been available to an author in the specific case and provide evidence that there would be a reasonable prospect that such remedies would be effective.[6] The Committee notes that the State party has failed to explain which judicial and administrative avenues could have provided redress in respect of the authors' claims in the present case. In view of the above, and taking into account the clear wording of Federal Constitutional Act No. 6-FKZ and Federal Act No. 91-FZ, which codified the automatic recognition as Russian citizens of all who were deemed to be residing permanently in Crimea and provided for the application of the State party's criminal law in Crimea,

[3] See European Court of Human Rights, *Ukraine v. Russia (*re *Crimea)*, Applications No. 20958/14 and No. 38334/18, Decision, 16 December 2020, paras. 303 ff.

[4] *Colamarco Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

[5] *Länsman et al. v. Finland* (CCPR/C/52/D/511/1992), para. 6.2. See also Committee on the Elimination of Racial Discrimination, *D.R. v. Australia* (CERD/C/75/D/42/2008), para. 6.5.

[6] *Butovenko v. Ukraine* (CCPR/C/102/D/1412/2005), para. 6.4; and *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), para. 9.3.

including for offences committed before 18 March 2014, and the decision of the Constitutional Court of 19 March 2014, the Committee concludes that there were no effective remedies that the authors could have pursued concerning their claims under articles 9, 12, 15, 17 and 26 of the Covenant. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.[7]

7.7 The Committee considers that the authors have sufficiently substantiated their claims under articles 9, 12, 15, 17 and 26 of the Covenant for the purposes of admissibility, while noting that Mr. Bratsylo has not invoked a claim under article 17 of the Covenant. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' claim that their detention by the State party is arbitrary because they were sentenced for actions committed before the State party extended the application of its criminal legislation to Crimea, and the actions in question could not be considered criminal under articles 9 and 12 (3) of the State party's Criminal Code. According to the authors, the State party applied its criminal legislation to them retroactively. The Committee also notes the State party's submission that its actions were based on the Treaty on Admission of 18 March 2014, Federal Constitutional Act No. 6-FKZ and Federal Act No. 91-FZ, which provide for the wholesale enactment of Russian law in Crimea. In particular, article 2 of Federal Act No. 91-FZ expressly states that the criminality and punishability of acts committed in the territory of Crimea before 18 March 2014 are to be determined in accordance with the criminal law of the State party. The Committee notes that, on 19 March 2014, the Constitutional Court affirmed the constitutionality of the Treaty on Admission and its objectives.

8.3 The Committee observes that, on 3 December 2013, Mr. Bratsylo was charged with criminal offences under the Criminal Code of Ukraine and was later detained on remand. On 16 April 2014, the Leninskiy District Court extended Mr. Bratsylo's detention until 2 June 2014, on new charges under the Criminal Code of the State party. On 30 April 2014, he was convicted of charges under article 111 (4) of the Criminal Code of the State party and sentenced to eight and a half years in prison, even though, at the time of his sentencing, the State party had yet to pass Federal Act No. 91-FZ. Similarly, the Committee observes that, on 13 November 2013, Mr. Golovko and Mr. Konyukhov were each sentenced to 13 years in prison by the Kyiv District Court in Simferopol, for offences under the Criminal Code of Ukraine. On 31 July 2014, their sentences were reclassified under the State party's Criminal Code by the Court of Appeal of the Republic of Crimea.

8.4 The Committee recalls its jurisprudence, in which it has stated that a person's right to liberty is not absolute. While it is recognized in article 9 of the Covenant that deprivation of liberty is sometimes justified, for example, in the enforcement of the criminal law, arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with being "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.[8] The Committee observes that, despite the signature of the Treaty on Admission on 18 March 2014 and, later, the passing of Federal Act No. 91-FZ, article 12 (3) of the State party's Criminal Code does not provide for the prosecution of crimes committed by foreign nationals outside its territory unless they were committed against its citizens or interests or unless so provided for in international agreements. It also observes that article 9 of the same Code states that the criminality and punishability of an act is to be determined in accordance with the criminal law that was operative at the time of the commission of the act. The Committee notes that the crimes for which the authors were sentenced by the State party's domestic courts were not committed in the territory or against citizens of the State party, that there was no

[7] European Court of Human Rights, *Ukraine v. Russia (re Crimea)*, Decision, para. 365.

[8] *Cayzer v. Australia* (CCPR/C/135/D/2981/2017), para. 8.10.

international agreement that would have allowed the State party to prosecute the authors or to execute decisions of Ukrainian courts and that it was the Criminal Code of Ukraine that was in force in the territory of Crimea at the time of the commission of the crimes.

8.5 The Committee notes the authors' claim that the State party applied its criminal legislation to them retroactively, in violation of article 15 of the Covenant, which led to their arbitrary detention and conviction. Their claims under article 9 and those relating to article 15 of the Covenant are therefore closely linked. The Committee notes the State party's submission that, under article 2 of Federal Act No. 91-FZ, the criminality and punishability of acts committed in Crimea before 18 March 2014 are to be determined on the basis of its legislation. According to the State party, the provisions of article 15 of the Covenant cannot be construed in such a way as to allow persons who have committed acts considered criminally punishable in accordance with the criminal legislation of virtually all the countries of the community of nations and in respect of whom criminal proceedings have already been initiated to evade criminal responsibility in the event of a change in the territorial jurisdiction of the State. The Committee recalls that the Covenant explicitly prescribes that no derogation can be made from article 15, which sets forth the principle of legality in the field of criminal law, that is, the requirement that both criminal liability and punishment be limited to clear and precise provisions in the law that was in place and applicable at the time that the act or omission occurred, except in cases where a later law imposes a lighter penalty.[9] The universal acceptance of the principle of the non-retroactivity of penal law with regard to criminalization and sentencing in times of peace is evidenced by its inclusion in virtually all universal and regional human rights treaties.

8.6 The Committee recalls that the Covenant applies in situations of armed conflict to which the rules of international humanitarian law also are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.[10] In this regard, the Committee refers to the Fourth Geneva Convention, which protects the rights of civilians in areas of armed conflict and, more specifically, to articles 65 and 67 thereof, where the principle of the non-retroactivity of the penal law is confirmed. In these circumstances, the Committee concludes that the detention of Mr. Bratsylo, starting from 16 April 2014, and Mr. Golovko and Mr. Konyukhov, starting from 31 July 2014, when new charges against them were brought under the State party's domestic law (see para. 8.3 above), and the retroactive application of the State party's criminal law were arbitrary and constituted a violation of the authors' rights under articles 9 (1) and 15 (1) of the Covenant.

8.7 The Committee notes the authors' claim that their transfer from Ukraine and subsequent detention in the State party amounted to a violation of article 12 (4) of the Covenant. The Committee also notes the State party's submission that it has not restricted the authors' right to remain in their own country and that, if the authors consider Ukraine to be their own country, nothing prevents them from returning to Ukraine after serving their prison sentences.

8.8 Recalling paragraph 19 of its general comment No. 27 (1999), the Committee notes that the right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets and implies the right to remain in one's own country. In the present case, it is not disputed that all the authors were Ukrainian citizens on the date on which the State party established effective control over Crimea. While Mr. Bratsylo continues to hold only Ukrainian citizenship, nothing in the case materials indicates that Mr. Golovko and Mr. Konyukhov have renounced or lost their Ukrainian citizenship. Consequently, the Committee considers that the authors have established that Ukraine is their own country within the meaning of article 12 (4) of the Covenant.

8.9 The Committee observes that the authors were transferred from Crimea to Rostov Province, in the State party, on 3 July 2014 (Mr. Bratsylo), 2 August 2014 (Mr. Golovko) and 11 September 2014 (Mr. Konyukhov) to serve their prison sentences. It notes the State

[9] General comment No. 29 (2001), para. 7.

[10] General comment No. 31 (2004), para. 11; and general comment No. 35 (2014), para. 64.

party's submission that it considers Mr. Golovko and Mr. Konyukhov to be Russian citizens only and that, despite their numerous transfer requests, they cannot be transferred to Ukraine because the withdrawal of citizenship from a person who is currently serving a prison sentence is prohibited. The Committee recalls paragraph 20 of its general comment No. 27 (1999), according to which the concept of an individual's own country is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at a minimum, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law and of individuals whose country of nationality has been incorporated into or transferred to another national entity whose nationality is being denied to them. The Committee recalls that a State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.[11] The above also applies in situations of forced imposition of nationality. In the light of the information before it, the Committee therefore concludes that the transfer of the authors from Ukraine to the State party to serve their prison sentences was arbitrary and thus amounts to a violation of their rights under article 12 (4) of the Covenant.

8.10 The Committee notes the claim by Mr. Golovko and Mr. Konyukhov that the forceful conferral upon them of Russian citizenship violated their rights under article 17 of the Covenant, since it had a negative effect on their private lives and forced upon them loyalty to the State party and a new identity. The Committee recalls that article 17 of the Covenant provides, inter alia, that no one is to be subjected to arbitrary and unlawful interference with their privacy. The Committee recalls that the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others, or alone.[12] It notes that "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity.[13] The Committee observes that the European Court of Human Rights has recognized that the right to "private life" under article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) encompasses an individual's social identity, which is significantly impacted by an individual's nationality.[14] The International Court of Justice defines nationality as a legal bond that has as its basis "a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties" between the individual and the State whose nationality is sought or acquired.[15] Consequently, the Committee is of the view that nationality constitutes an important component of one's identity and that protection against arbitrary or unlawful interference with one's privacy includes protection against the forceful imposition of a foreign nationality.

8.11 The Committee must therefore examine whether the forced imposition by the State party of its citizenship on Mr. Golovko and Mr. Konyukhov complied with the aims and objectives of the Covenant. The Committee reiterates that article 17 of the Covenant deals with protection against both unlawful and arbitrary interference. The Committee refers to article 3 of its general comment No. 16 (1988) on the right to privacy, in which it states that the term "unlawful" means that no interference can occur except in cases envisaged by the law, which itself must comply with the provisions, aims and objectives of the Covenant. The Committee notes the authors' allegation that the restriction in question was based on article 4 of Federal Constitutional Act No. 6-FKZ. Under these circumstances, the question before the Committee is not whether such interference has a legal basis in domestic law, but whether the application of domestic law was arbitrary under the Covenant, as even interference

[11] General comment No. 27 (1999), para. 21.

[12] *Raihman v. Latvia* (CCPR/C/100/D/1621/2007 and CCPR/C/100/D/1621/2007/Corr.1), para. 8.2.

[13] European Court of Human Rights, *Case of Genovese v. Malta*, Application No. 53124/09, Judgment, 11 October 2011, para. 30.

[14] Ibid., para. 33.

[15] *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, Judgment, 6 April 1955, *I.C.J. Reports 1955*, p. 23.

provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.[16]

8.12 In this regard, the Committee has already expressed concern, inter alia, about reports regarding the limitation of the possibility for residents of Crimea to make an informed decision on the free choice of their citizenship owing to the very short period granted to them to refuse Russian citizenship.[17] The Committee noted that this disproportionately affected those individuals who could not apply in person at the designated locations to refuse citizenship, in particular persons in places of detention and other closed institutions.

8.13 The Committee notes that article 4 of Federal Constitutional Act No. 6-FKZ provides for the automatic recognition as citizens of the State party of all citizens of Ukraine and stateless persons permanently residing in the territory of Crimea on the date of its admission to the State party. The only way to opt out was to submit a formal letter refusing Russian citizenship to the authorities by 18 April 2014. The Committee notes the authors' submission that Mr. Golovko and Mr. Konyukhov were not informed in due time about the enactment of the law or about the option to refuse Russian citizenship and that the imposition of Russian citizenship was against their will, as they do not consider that they have any real link with the State party and describe themselves as Ukrainian citizens, with deep personal and professional ties to Ukraine. The Committee also notes the State party's assertion that Mr. Golovko and Mr. Konyukhov have not provided any evidence to indicate that they were deprived of the opportunity to refuse Russian citizenship in the month following the signature of the Treaty on Admission.

8.14 The Committee observes that Federal Constitutional Act No. 6-FKZ came into force on 1 April 2014, at which time the Federal Migration Service of the Russian Federation first provided instructions on the refusal procedure, leaving those who wished to opt out of acquiring Russian citizenship only 18 days in which to do so. It notes the submission of Mr. Golovko and Mr. Konyukhov that, upon learning that they had been granted Russian citizenship, they attempted to renounce it by submitting letters to their respective prison administrations, only to be told that they could not renounce their Russian citizenship because the deadline for refusing it had already passed, and national legislation prohibited them from renouncing their citizenship while serving a prison sentence. Concerning the absence of evidence that Mr. Golovko and Mr. Konyukhov were deprived of the opportunity to refuse Russian citizenship in a timely manner, the Committee observes from the information in the case file that some prisoners in Crimea were formally issued written memos, albeit very soon before the deadline, about their right to refuse Russian citizenship, and these memos were included in their prison case files. Given the lack of information provided by the State party concerning the existence of such memos in the authors' case files, the Committee cannot conclude that Mr. Golovko and Mr. Konyukhov were duly informed about the right to refuse Russian citizenship before the deadline of 18 April 2014. In the light of the foregoing, the Committee considers that the procedure for opting out of acquiring Russian citizenship and the short time frame within which Mr. Golovko and Mr. Konyukhov could have opted out constituted a violation of their rights under article 17 of the Covenant.

8.15 Regarding the authors' claim under article 26 of the Covenant, the Committee must determine whether imposing on the authors Russian citizenship and subsequently transferring them from Crimea to the State party constituted a violation of article 26 of the Covenant. The Committee notes the authors' claim that the laws that enacted the automatic naturalization policy were specifically targeted at Ukrainian nationals living in Crimea, in other words, persons of a particular national origin, which is a prohibited ground of discrimination.

8.16 The Committee observes that Mr. Golovko and Mr. Konyukhov have been affected by the exclusionary effect of Federal Constitutional Act No. 6-FKZ, namely, the fact that the automatic naturalization applies only to citizens of Ukraine or stateless persons with permanent residence in the territory of Crimea or the city of Sevastopol. The question before

[16] General comment No. 16 (1988), para. 4.

[17] CCPR/C/RUS/CO/7, para. 23. See also the conference room paper of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session36/list-reports.

the Committee, therefore, is whether this precondition for naturalization is compatible with the non-discrimination requirement of article 26 of the Covenant. The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which it is stated that article 26 entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (para. 1). The Committee also recalls that not every differentiation based on the prohibited grounds amounts to discrimination, as long as it is based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the Covenant.[18]

8.17 The Committee considers that the State party has failed to provide a reasonable justification to explain why the automatic naturalization applied only to citizens of Ukraine or stateless persons with permanent residence in the territory of Crimea or the city of Sevastopol. In the absence of convincing explanations from the State party, the Committee considers that the differentiation of treatment to which Mr. Golovko and Mr. Konyukhov were subjected by way of automatic naturalization on the basis of their national origin, which resulted in restrictions on their transfer to Ukraine to serve their prison sentences, was not based on reasonable and objective criteria and therefore constitutes discrimination on the ground of national origin under article 26 of the Covenant.

8.18 The Committee notes the authors' claim that, by transferring them to the State party to serve their prison sentences, the State party did not take into account the specific nature of their situation, namely, that they are Ukrainian nationals from Crimea, that they have the status of protected persons according to the Fourth Geneva Convention and that they have no genuine and effective links with the territory of the State party, which makes the impact of such transfers disproportionate. The question before the Committee, therefore, is whether the status of a protected person, according to the Fourth Geneva Convention, falls under "other status" as a category protected against discrimination under article 26 of the Covenant. The Committee recalls that a violation of article 26 can also result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate.[19] The Committee observes that the authors' transfer to prisons in the State party was due to insufficient capacity within high-security prisons in Crimea. The Committee considers that States parties may have a legitimate interest in the transfer of prisoners to avoid overcrowding. However, such transfers cannot be carried out with disregard to the disproportionate consequences that they can have for protected groups. In this regard, the Covenant, including article 26 thereof, applies in situations of armed conflict to which the rules of international humanitarian law also are applicable (see para. 8.6 above). The Fourth Geneva Convention requires that sentences be served in the territory under the State party's effective control. In the absence of any further explanations from the State party on the justification for the authors' transfer to its territory, the Committee concludes that their transfer constituted discrimination on the ground of their protected status.

8.19 In the light of the above considerations, the Committee concludes that the forced naturalization of Mr. Golovko and Mr. Konyukhov constituted discrimination on the ground of national origin, and their and Mr. Bratsylo's subsequent transfer from Crimea to the State party, despite their protected status, violated their rights under article 26 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of Mr. Bratsylo under articles 9 (1), 12 (4), 15 (1) and 26 of the Covenant and of Mr. Golovko and Mr. Konyukhov under articles 9 (1), 12 (4), 15 (1), 17 (1) and 26 of the Covenant.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Recognizing that the authors have already served their prison sentences and been released (see para. 6.2 above), the State party is obligated, inter alia: (a) to provide the authors with adequate compensation;

[18] *G. v. Australia* (CCPR/C/119/D/2172/2012), para. 7.12.

[19] *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2.

(b) to eliminate the consequences of the imposition of Russian citizenship on Mr. Golovko and Mr. Konyukhov; and (c) to ensure that all the authors have the possibility of returning to their own country. In addition, the State party is under an obligation to take steps to avoid similar violations in the future, including by reviewing its legislation on citizenship and the retroactive application of the criminal law to the territory of Crimea to ensure that it is in compliance with the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them broadly in the official language of the State party.